

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER 00-0401

Gaming Card Excise Tax

For Tax Periods: 1997-1999

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Issues

1. Gaming Card Excise Tax – Imposition

Authority: IC 4-32-15-2, 45 IAC 18-3-1, 45 IAC 18-3-1 (b)(8), 45 IAC 18-4-2 (a)(1)(B), *Muncie Novelty v. Department of State Revenue*, 720 N.E.2d 779 (Ind. Tax 1999).

The taxpayer protests the imposition of gaming card excise tax.

2. Gaming Card Excise Tax –Calculation of Gaming Card Excise Tax

Authority: IC 4-32-15-2.

The taxpayer contends that the auditor made several errors in calculating the gaming card excise tax.

Statement of Facts

The taxpayer is engaged in the business of manufacturing and distributing novelties including gaming devices. During the tax period, the taxpayer made substantial cash sales of gaming devices at their facility. The taxpayer charged sales tax rather than gaming card excise tax on these sales. The taxpayer did not keep records as to who purchased the taxable gaming devices and other information required by the Indiana Department of Revenue. In an audit, the taxpayer was assessed gaming card excise tax on sales of the gaming devices and received a credit for sales taxes collected and remitted. The taxpayer protested the assessment and a hearing was held. More facts will be provided as necessary.

Discussion

Indiana imposes a ten per cent (10%) excise tax on businesses such as the taxpayer when they transfer “pull tabs, punchboards, or tip boards to qualified organizations in Indiana for resale by those qualified organizations.” IC 4-32-15-2.

The first issue to be determined is whether or not the Indiana Department of Revenue imposed the gaming card excise tax on the sale of pull tabs, punchboards or tip boards.

“Pull tabs” are defined at 45 IAC 18-3-1 (b)(5) as follows:

As used in this article, “pull-tab” means a game conducted in the following manner:

- (A) A single folded or banded ticket or a two (2) ply card with perforated break-open tabs is bought by a player from a qualified organization.
- (B) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.
- (C) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.
- (D) Winners or potential winners, if the game includes the use of a seal, are determined by revealing the faces of tickets or cards. The player may be required to sign the player’s name on numbered lines provided, if a seal is used.
- (E) The player with a winning pull-tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be clearly and fully described on the flare or on the game information side of the card.

“Punchboard” is defined at 45 IAC 18-3-1 (b)(6) as follows:

As used in this article, “punchboard” means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single section to reveal a symbol or prize amount.

“Tip board” is defined at 45 IAC 18-3-1 (b)(8) as follows:

As used in this article, “tip board” means a board, placard, or other device that is marked off in a grid or columns, with each section containing a hidden number or other symbol that determines a winner. The prize and the price of each tip must be described on the board.

The taxpayer’s representative brought samples of many of the items on which gaming card excise tax was imposed and explained the use of each of these gaming devices to the hearing

officer. These gaming devices include but are not limited to “All Event Sportscard,” “33 Line Race Board,” “Victory Lane Nascard Board,” “Redemption Tickets,” “Bankers Club Seal Card,” “Happy Hour Pull Tabs,” “High Bowler Club,” “Twin 100.00’s Seal Card,” “Book Cover Tops,” “Twin 100.00s Cards,” “Double Roll Tickets,” and “Single Roll Tickets.” After the hearing, the hearing officer had the opportunity to apply the definitions of pull tabs, punchboards and tip boards to the items on which gaming card excise tax was imposed. The “Redemption Tickets,” “Single Roll Tickets,” and “Double Roll Tickets” were the only protested items that did not meet the regulatory definitions of gaming devices subject to the gaming card excise tax; therefore, the taxpayer properly collected sales tax rather than gaming card excise tax on the transfer of these items.

Business entities selling gaming devices are required to maintain records so that the Indiana Department of Revenue can ascertain the date of sale, the customer name and business address, a full description including serial numbers of the item sold, the quantity and sale price of each item, the manufacturer’s or distributor’s license number, the customers’ license number and the gaming card excise tax due on the sale. 45 IAC 18-4-2 (a)(1)(B). The taxpayer admitted that it did not keep such records. The taxpayer argued that its computer system could not produce and maintain such copious records. This lack of records made it impossible for the auditor to determine which sales of gaming cards were made to qualified organizations. Therefore the auditor assumed that all sales of pull tabs, punchboards and tip boards were made to qualified organizations. The auditor assessed the ten per cent (10%) gaming card excise tax on each of the sales and credited the taxpayer for the five per cent (5%) sales tax collected on each of the sales.

The issue to be determined is whether or not the audit properly assessed gaming card excise tax on all the sales of pull tabs, punchboards and tip boards when there are inadequate records to determine which gaming cards were sold to qualified organizations.

The Indiana Tax Court dealt with this issue in *Muncie Novelty v. Department of State Revenue*, 720 N.E.2d 779 (Ind. Tax 1999). In that case a gambling device distributor failed to keep the required records on its sales of pull tabs, punchboards and tip boards. Just as in this case, the distributor knew the identity of the customers and could easily determine if they were qualified organizations. Since the taxpayer did not have the required records to prove which sales were made to qualified organizations subject to the gaming card excise tax, the auditor assessed the gaming card excise tax on all of the sales. The Court held that it was “reasonable for the Department to assume that all unidentified customers were qualified and thus owed the 10% GCET.” Id. at page 782. These facts are identical to the facts in taxpayer’s situation. The auditor properly assessed gaming card excise tax on all the sales of pull tabs, punchboards and tip boards.

Finding

The taxpayer’s protest to the assessment of gaming card excise tax on redemption tickets, single roll tickets and double roll tickets is sustained. The taxpayer’s protest to the other assessments of gaming card excise tax is denied.

2. Gaming Card Excise Tax – Calculation of Gaming Card Excise Tax

Discussion

The taxpayer contends that the auditor made several calculation errors in determining the taxpayer's gaming card excise tax liability. Specifically the taxpayer alleges that the auditor assessed gaming card excise tax on several credit invoices and transposed some numbers when recording the amount of sales. A review of the audit indicates that the auditor did make some calculation errors. The gaming card excise tax is only assessed on the actual value of the sales of pull tabs, punchboards and tip boards. IC 4-32-15-2.

Finding

The taxpayer's protest is sustained subject to audit verification.

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